

Vermont Coronavirus State and Local Fiscal Recovery Funds - Payroll Guidance

Agency of Administration – Department of Finance & Management

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Recipients¹ of Coronavirus State and Local Fiscal Recovery Funds (SLFRF) may use this funding to cover certain employee wages, salaries, and covered benefits to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency and its negative economic impacts, including time spent on necessary administrative work.² The below guidance details these allowed uses based on the most recent policies of the US Treasury.

For eligible payroll coverage, "benefits" means "costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans, workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes)."³

Additionally, recipients can use SLFRF funds to bolster government employment. Specifically, the final rule allows for SFR funds to be used for avoiding layoffs, offering retention pay, and providing additional funding for employees who experienced pay cuts and furloughs.

Lastly, recipients can use SLFRF funds to provide premium pay to qualifying employees who perform essential work. Premium pay is "designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic."⁴ A form of hazard pay, premium pay should be provided "in addition to compensation typically received," not used as a substitute for standard wages or remuneration.⁵ Treasury outlines a three-part framework to determine premium pay eligibility, described in depth below.

Just like direct beneficiaries, subrecipients of SLFRF that wish to spend allocated funds on administrative or payroll costs must comply with the statutory text of the American Rescue Plan Act, Treasury's Award Terms and Conditions, and any applicable rules, regulations, or guidance issued by the federal government, including but not limited to the applicable portions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the "Uniform Guidance," [2 CFR 200 et seq.](#)) when administering the program or project for which they have received SLFRF. The entity providing SLFRF to a subrecipient is ultimately accountable to Treasury for its subrecipients' compliance with all applicable conditions.⁶

¹ For the purposes of this guidance, "recipients" include both direct beneficiaries of SLFRF and subrecipients that receive such funding to carry out a program or project on behalf of a state or local government.

² [Coronavirus SLFRF Final Rule, Federal Register, Vol. 87, No. 18, Rules and Regulations \(Jan. 27, 2022\)](#) (the "Final Rule"), p. 4388; [Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities, v. 4.1](#) (June 17, 2022) (the "Reporting Guidance"), p. 8.

³ [Final Rule](#), p. 4446.

⁴ [Final Rule](#), p. 4397.

⁵ [Final Rule](#), p. 4400.

⁶ [Reporting Guidance](#), p. 4.

1) Administrative Needs

SLFRF can be used to cover the portion of payroll and benefits corresponding to an employee's time spent on addressing "administrative needs of recipient governments that were caused or exacerbated by the pandemic."⁷ The administrative work can include, but is not limited to, time spent on distributing SLFRF funds, managing grant programs established using SLFRF funds, and addressing "backlogs resulting from pandemic related shutdowns (e.g., backlogs in court systems)".⁸ Allowable administrative expenses can also include those "associated with programs to the public health emergency and its negative economic impacts, including programs that are not funded by SLFRF or not federally funded."⁹

"State, local and Tribal governments may use SLFRF funds to improve the design and execution of programs responding to the COVID-19 pandemic and to improve the efficacy of programs addressing negative economic impacts."¹⁰ Allowable administrative expenses include, but are not limited to, program evaluation and evidence resources, data analysis resources, community outreach and engagement, and capacity building.¹¹

Recipients may also use SLFRF for expenses that can help ensure effective management and oversight of funds, including consultation for ensuring compliance with legal, regulatory, and other requirements.¹² A reasonably proportionate share of audit costs can also be covered by SLFRF as long as the audit is required by the Single Audit Act Amendments of 1996 and performed in accordance with [2 CFR 200, Subpart F](#).¹³

SLFRF can be used for both direct and indirect administrative costs in accordance with the cost principles outlined in Uniform Guidance, but the same costs cannot be double charged or charged inconsistently to direct and indirect cost categories.¹⁴ "Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are [sic] allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office."¹⁵

According to Treasury, "If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs."¹⁶

Unless otherwise explicitly authorized by Vermont law, administrative expenses for any SLFRF-funded program or project are capped at 5% of the appropriation. For proposals where administrative expenses

⁷ [Final Rule](#), p. 4388.

⁸ [Final Rule](#), p. 4388.

⁹ [Final Rule](#), p. 4387.

¹⁰ [Final Rule](#), p. 4387.

¹¹ [Final Rule](#), p. 4388.

¹² [Reporting Guidance](#), p. 8.

¹³ [Reporting Guidance](#), p. 8.

¹⁴ [Reporting Guidance](#), p. 8.

¹⁵ [Final Rule](#), p. 4435.

¹⁶ [Reporting Guidance](#), p. 9.

will exceed 5% of the appropriation, agencies must contact the Covid-19 Financial Office (CFO) to request a waiver.

2) Public Health and Safety Staff

Recipients may use SLFRF for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, including first responders, to the extent that the employee's time is dedicated to responding to the COVID-19 public health emergency.¹⁷ Treasury refers to these employees as "public health and safety staff." Unlike payroll coverage under the Coronavirus Relief Fund (CRF), SLFRF can only be used to cover payroll for public health and safety staff to the extent of the employee's time that is dedicated to responding to COVID-19 (i.e., these employees are not automatically eligible for 100% payroll coverage with SLFRF). Treasury provides a non-exclusive list of individuals who qualify as public health and safety employees:¹⁸

- a) Public Safety Employees include:
 - Police officers (including state police officers)
 - Sheriffs and deputy sheriffs
 - Firefighters
 - Emergency medical responders
 - Correctional and detention officers
 - Those who directly support such employees such as dispatchers and supervisory personnel
- b) Public Health Employees include:
 - Employees involved in providing medical and other health services, including behavioral and physical health services, to patients
 - Medical staff assigned to schools, prisons, and other such institutions
 - Support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff)
 - Employees of public health departments directly engaged in matters related to public health and related supervisory personnel
- c) Human services staff include employees providing or administering:
 - Social services
 - Public benefits
 - Child welfare services
 - Child, elder, or family care, as well as others
- d) Employees with similar jobs to those above, whose services are dedicated to mitigating or responding to the COVID-19 public health emergency:
 - There is not a precise way to define "similar employees" across different employment types. The relevant unit of government should maintain documentation of the conclusion that an

¹⁷ [Final Rule](#), p. 4450.

¹⁸ [Final Rule](#), p. 4384.

employee is primarily dedicated to COVID-19 response for any employees that do not fall within the categories above.

Conversely, Treasury disallows SLFRF spending on “indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID–19... under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.”¹⁹

Recipients may use presumptions for assessing whether a public health or safety employee, division, or operating unit is primarily dedicated to COVID-19 response.²⁰ For example, “a recipient could consider the amount of time spent by employees in its public health department’s epidemiology division in responding to COVID–19 and, if a majority of its employees are dedicated to responding to COVID–19, determine that the entire division is primarily dedicated to responding to COVID–19.... [R]ecipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID–19 related tasks and apply that share of time to all employees in that position.”²¹

Recipients should maintain records to support this assessment, including payroll records, attestations from supervisors or staff, and/or regular work product or correspondence demonstrating work on COVID-19 response. While recipients are not required to routinely track staff hours for public health and safety employees, they should periodically reassess their determinations of activity eligibility and employees’ time spent on COVID-19 response and should maintain records to this effect.²²

3) Government Employment

For government/public sector recipients, the final rule allows for SLFRF funds to be used for the purpose of avoiding layoffs, offering retention pay, and providing additional funding for employees who experienced pay cuts and furloughs.

Avoiding layoffs

- Recipients may use funds to maintain current compensation levels (for public sector workers), with adjustments for inflation, so long as this use of funds prevents layoffs that would otherwise be necessary.
- “Recipients must be able to substantiate that layoffs were likely in absence of SLFRF funds and would be substantially due to the public health emergency or its negative economic impacts.”²³
- Recipients should also document their substantiation assessment.

¹⁹ [Final Rule](#), p. 4385.

²⁰ [Final Rule](#), p. 4384.

²¹ [Final Rule](#), p. 4384.

²² [Final Rule](#), pp. 4384-85.

²³ [Final Rule](#), p. 4387.

Retention Pay

- Funds may be used to provide retention incentives that are “designed to persuade [public sector] employees to remain with the employer.”²⁴ These incentives should not be excessive and should encompass incentives that are traditionally offered by the recipient or alternative employers.
- “Recipients must be able to substantiate that the employees were likely to leave employment in the absence of the retention incentive and should document their assessment.”²⁵
- “Treasury will presume that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employee, as long as the other requirements are met.”²⁶

Providing additional funding for employees who experienced pay cuts and furloughs

- The final rule allows for funds to be provided to “[public sector] employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020.”²⁷
- However, “recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts” and must be reasonably proportional to any negative economic impacts.²⁸

4) Premium Pay

Recipients may use SLFRF funds for the provision of premium pay to workers that, “by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic.”²⁹ Treasury has established a three-part framework that outlines recipient eligibility for premium pay.

1) Eligible Workers

- “[A]ll public employees of recipient governments” are eligible workers.³⁰
- Treasury has also identified a list of non-public critical infrastructure sectors where workers are considered essential:
 - Staff at nursing homes, hospitals, and home care settings
 - Workers at farms, food production facilities, grocery stores, and restaurants
 - Janitors and sanitation workers
 - Truck drivers, transit staff, and warehouse workers
 - Public health and safety staff
 - Childcare workers, educators and other school staff

²⁴ [Final Rule](#), p. 4387.

²⁵ [Final Rule](#), p. 4387.

²⁶ [Final Rule](#), p. 4387.

²⁷ [Final Rule](#), p. 4387.

²⁸ [Final Rule](#), p. 4387.

²⁹ [Final Rule](#), p. 4397.

³⁰ [Final Rule](#), p. 4398.

- Social service and human services staff
- The chief executive (or equivalent) of a recipient government may also designate additional non-public sectors as critical.

2) *Essential Work*

- Treasury defines essential work as “work that (1) is not performed while teleworking from a residence and (2) involves either (i) regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work or (ii) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work.”³¹

3) *Responsiveness*

- Premium pay is authorized for “eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories: (1) the worker’s pay is below the wage threshold, (2) the worker is not exempt from the FLSA overtime provisions, or (3) the recipient has submitted a written justification to Treasury.”³²
- The “wage threshold” is 150% of the worker’s residing state or county’s average annual wage for all occupations on an annual basis (whichever is higher), according to the Occupational Employment and Wage Statistics published by the Department of Labor’s Bureau of Labor Statistics. This threshold applies to the worker’s wage including the proposed premium pay.

Premium pay can be provided in the form of lump sum payments or through consistent durational payments (hourly, monthly, quarterly, etc.). However, compensation is capped at \$13 per hour and cannot exceed \$25,000 per employee for the entire period of performance.³³ Premium pay can be paid retroactively, but SLFRF funds cannot be used to “reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee.”³⁴ SLFRF cannot be used for premium pay for work conducted after the termination or expiration of the national emergency declaration made pursuant to the National Emergencies Act, but state or local governments need not maintain their own states of emergency to authorize premium pay.³⁵

SLFRF-funded payroll expenses beyond those outlined above, and/or those not directly related to the COVID-19 pandemic, must be reviewed and approved in advance of program design by AoA.

³¹ [Final Rule](#), p. 4398.

³² [Final Rule](#), p. 4399.

³³ [Final Rule](#), p. 4400.

³⁴ [Final Rule](#), p. 4400.

³⁵ [Final Rule](#), p. 4450; [SLFRF Final Rule Frequently Asked Questions, v 2.0 \(last updated July 27, 2022\)](#), No. 1.7 (p.4).